

Privacy and Other Legislation Amendment Bill 2024 (Cth)

Submission to the Senate Legal and Constitutional
Affairs Legislation Committee, Parliament of Australia

10 October 2024

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Senate Legal and Constitutional Affairs Legislation Committee ('Committee') on the Privacy and Other Legislation Amendment Bill 2024 (Cth) ('Bill').
2. The ALA welcomes the Federal Government progressing 23 of the 25 legislative proposals that were agreed to as part of the Government Response to the Privacy Act Review in 2023, to which the ALA made a submission.² We welcome future stakeholder consultations on reforms to fulfil commitments not addressed in this Bill.
3. Further, we acknowledge that the Federal Government is seeking to respond through legislation – including amendments to the *Privacy Act 1988* (Cth) ('*Privacy Act*') to a variety of deeply concerning trends and incidents in Australia within the digital space, including data breaches, fraud, identity theft, unauthorised surveillance, doxxing and other serious invasions of privacy.³
4. This submission addresses the following elements of this Bill:
 - a. new civil penalties for *Privacy Act* breaches and enhancing enforcement powers for the Australian Information Commissioner;
 - b. the development of a Children's Online Privacy Code; and
 - c. the proposed new statutory cause of action in tort for serious invasions of privacy.

New civil penalties for *Privacy Act* breaches and enhancing enforcement powers for the Australian Information Commissioner

5. This Bill details plans for expanding the range of civil penalties available for privacy breaches and strengthening the Australian Information Commissioner's enforcement powers.⁴

² Australian Lawyers Alliance, Submission to the Attorney-General's Department, Australian Government, *Government response to the Privacy Act Review Report* (28 March 2023) <www.lawyersalliance.com.au/documents/item/2432>.

³ Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth) 3.

⁴ Privacy and Other Legislation Amendment Bill 2024 (Cth) Parts 8, 9, 13 and 14.

6. The ALA welcomes the clarification provided in this Bill as to what constitutes “serious” interference with another’s privacy and what factors may be taken into account by a court in “determining whether an interference with privacy is serious”.⁵
7. The ALA supports increasing enforcement mechanisms for the Australian Information Commissioner, including for monitoring compliance with the *Privacy Act*, and increasing the capacity of the Office of the Australian Information Commissioner.

Recommendation

- **That the Federal Government ensures that the Office of the Australian Information Commissioner is sufficiently resourced to efficiently manage existing privacy-related matters as well as additional matters under any expanded enforcement powers.**

Development of a Children’s Online Privacy Code

8. The ALA supports additional protections for children and vulnerable persons in relation to privacy and the digital space.
9. As such, we support the proposal for the Australian Information Commissioner to develop and register a Children’s Online Privacy Code to clarify children’s rights to privacy online.⁶

A new statutory cause of action in tort for serious invasions of privacy

10. The ALA supports in principle the introduction of a statutory cause of action in tort for serious invasions of privacy, as proposed in this Bill,⁷ along with providing a wide range of remedies to cover harms, including but not limited to financial loss and emotional distress.
11. We note, however, that the Bill acknowledges a number of exceptions and defences to this proposed cause of action in the interests of balancing competing rights and freedoms. This section of our submission will address this matter further.

⁵ Ibid cl 51, proposed subsection 13G(1B).

⁶ See: Ibid Part 4.

⁷ See: Ibid Part 2.

Balancing competing rights and freedoms

12. The ALA submits that the appropriate balance must be found between privacy protection, government administration, national security, media freedom and freedom of expression.
13. Attempts to reconcile the tension between privacy reforms and protecting individuals' rights and freedoms are evident in this Bill – particularly in the provisions regarding the proposed new statutory cause of action in tort for serious invasions of privacy and the development of a Children's Online Privacy Code.
14. It is inevitable, in the ALA's view, that tensions will arise between privacy reforms and many internationally-accepted human rights in the context of the continued absence of a federal Human Rights Act in Australia.
15. Without adequate clarity about what human rights are protected in Australia and any limits on those human rights protections, concerns will continue to be raised – and raised frequently – about the impact of current and future Commonwealth reforms on the public's rights.
16. As such, the ALA reiterates our long-held position that the Federal Government should legislate a federal Human Rights Act as a matter of priority.
17. The ALA notes that earlier this year the Parliamentary Joint Committee on Human Rights, chaired by Labor MP Josh Burns, formally recommended that Australia adopt a federal Human Rights Act.⁸
18. The ALA considers that a federal Human Rights Act would ensure that those who wield power within Australia's federal institutions are subject to a clear set of expectations concerning the rights of people domiciled in Australia or under Australian jurisdiction and, further, that those decisionmakers would be prevented from exercising power in such a way as to infringe upon those rights.
19. A federal Human Rights Act could be a powerful tool not only in keeping society diverse, fair, respectful and inclusive, but also being an essential adjunct to the institutions of parliamentary democracy and the common law. Importantly, it would also give domestic

⁸ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Final Report, May 2024) xxi and 301, Recommendation 1.

effect to Australia’s international human rights obligations, and clarity to the Australian public about their rights.

Recommendation

- **That the Federal Government enacts a federal Human Rights Act, which will serve as an essential guide for pursuing impactful legislative reforms while also safeguarding the rights of those subject to the Federal Government’s legislation, policies and programs.**

Conclusion

20. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Senate Legal and Constitutional Affairs Legislation Committee on the Privacy and Other Legislation Amendment Bill 2024 (Cth).

21. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.



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